

ONTARIO INVESTMENT AND WORKER
OWNERSHIP PROGRAM : DRAFT
LEGISLATION



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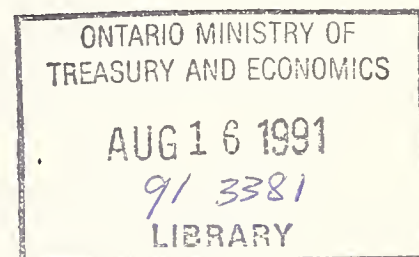
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ONTARIO INVESTMENT

AND

WORKER OWNERSHIP PROGRAM:

DRAFT LEGISLATION



Ministry of Treasury and Economics
Ministry of Revenue
Province of Ontario
August 15, 1991



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AN ACT TO PROVIDE FOR THE CREATION AND
REGISTRATION OF LABOUR SPONSORED VENTURE
CAPITAL CORPORATIONS TO INVEST IN ELIGIBLE
ONTARIO BUSINESSES

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Part I

1.- (1) In this Act,

"Canadian partnership" has the meaning assigned by section 102 of the Income Tax Act (Canada);

"Class A share", in respect of a corporation, means a share of a class of shares that entitle the holders thereof to,

- (a) receive notice of and, subject to the legislation under which the corporation is organized, to attend and vote at all meetings of the shareholders of the corporation,
- (b) receive dividends at the discretion of the board of directors of the corporation, and
- (c) receive, on dissolution of the corporation, all the assets of the corporation that remain after payment of all amounts payable to the holders of all other classes of shares of the corporation;

"Class B share" in respect of a corporation, means a share of a class of shares that do not entitle the holders thereof to receive dividends but do entitle the holders thereof to,

- (a) receive notice of and, subject to the legislation under which the corporation is organized, to attend and vote at all meetings of the shareholders of the corporation,
- (b) receive, on dissolution of the corporation, an amount equal to the amount of the equity capital received by the corporation on the issue of the Class B shares, and
- (c) vote as a class to elect a majority of the board of directors of the corporation;

"eligible business activity", of a corporation or a partnership, means any business that would be an active business within the meaning of paragraph 125(7)(a) of the Income Tax Act (Canada) if carried on by a corporation;

"eligible investment" means,

- (a) in respect of an employee ownership labour sponsored capital venture corporation, an investment in an eligible business which is an eligible investment under Part II, and
- (b) in respect of a labour sponsored investment fund corporation, an investment in an eligible business which is an eligible investment under Part III;

"employee group" means an employee group certified under Part II of this Act;

"employee organization" means,

- (a) a trade union, or
- (b) an association or federation of trade unions;

"employee ownership labour sponsored venture capital corporation" means a labour sponsored venture capital corporation registered under Part II;

"equity capital", in respect of a corporation, means the amount of consideration paid in money, calculated in the prescribed manner, for which shares of the corporation are issued;

"individual" has the meaning given to that term by subsection 248(1) of the Income Tax Act (Canada);

"labour sponsored investment fund corporation" means a labour sponsored venture capital corporation registered under Part III;

"labour sponsored venture capital corporation" means a corporation incorporated under the Business Corporations Act, 1982, or the Canada Business Corporations Act (Canada), which is registered under this Act;

"major shareholder", in respect of a corporation, means a person who beneficially owns, directly or indirectly, 10 per cent or more of the

voting rights attached to all voting shares of the corporation from time to time outstanding;

"Minister" means the Minister of Revenue or such other member of the Executive Council to whom the administration of this Act is assigned;

"Ministry" means the Ministry of the Minister;

"permanent establishment" means,

- (a) in respect of a corporation, a permanent establishment as defined by section 5 of the Corporations Tax Act, or
- (b) in respect of a partnership, a permanent establishment as determined under subsections 5(1) to (10) of the Corporations Tax Act if all references in those subsections to a "corporation" were read as references to a "partnership";

"person" means, except where the context requires otherwise, an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative and includes a corporation;

"prescribed" means prescribed by the regulations;

"registered retirement savings plan" has the meaning assigned by subsection 146(1) of the Income Tax Act (Canada);

"regulations" means the regulations made under this Act;

"related group" has the meaning assigned by subsection 251(4) of the Income Tax Act (Canada), except that in the determination of whether a group is a related group, a spouse includes a person defined to be a spouse in section 29 of the Family Law Act, 1986;

"security" means any share of any class or series of shares of a corporation or any debt obligation;

"stated capital" and "stated capital account" have the meaning ascribed to those terms in the Business Corporations Act, 1982 or the Canada Business Corporations Act (Canada).

"taxable Canadian corporation" has the meaning assigned by subsection 89(1) of the Income Tax Act (Canada);

"voting share" means a share of any class or series of shares of a corporation carrying a voting right either under all circumstances or under circumstances that have occurred and are continuing, other than a share of a class or series that must vote separately by reason of a statutory requirement;

- (2) Persons are related to each other if,
- (a) they are related for the purposes of the Income Tax Act (Canada), or would be related if a spouse for the purposes of that Act included a person defined as a spouse under section 29 of the Family Law Act, 1986;
 - (b) one of them is a partnership and the other person is the majority interest partner of the partnership; or
 - (c) each of them is a partnership and the same person is the majority interest partner of each.

(3) Unless otherwise prescribed, a corporation shall be deemed to be controlled by another person or corporation or by two or more corporations if,

- (a) shares of the first-mentioned corporation carrying more than 50 percent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other corporations; and
- (b) the votes carried by such shares are sufficient if exercised to elect a majority of the board of directors of the first mentioned corporation.

(4) In calculating for the purposes of this Act the total number of voting shares of a corporation beneficially owned or controlled, the total number shall be calculated as the total of all voting shares actually owned or controlled, but each share that carries the right to more than or less than one vote shall be calculated as the number of voting shares equalling the total number of votes carried.

(5) For the purposes of subsection (4), the total number of voting shares shall be deemed to include, unless otherwise prescribed, voting shares that would be owned following the exercise of,

- (a) an option, warrant or right; or
- (b) a conversion right that is attached to a debt obligation or to a

share of the corporation.

(6) In determining the number of shareholders of a corporation for the purposes of the Act, two or more persons holding the same share or shares jointly shall be counted as one shareholder.

(7) A person is a majority interest partner in respect of a partnership if,

- (a) the person would be deemed to be a majority interest partner of the partnership under subsection 97(3.1) of the Income Tax Act (Canada), or
- (b) the Minister is of the opinion that the person has and will continue to exercise control of the business affairs of the partnership under the provisions of a partnership agreement or other agreements between the partners.

2. The Minister shall maintain a register of all labour sponsored venture capital corporations registered under this Act, and the register shall be open for public inspection during normal office hours.

PART II

EMPLOYEE OWNERSHIP LABOUR SPONSORED VENTURE CAPITAL CORPORATIONS

3. In this Part,

"eligible business" means a taxable Canadian corporation or Canadian partnership;

"eligible employee" of an eligible business means an individual, other than a trust, who,

- (a) has been employed and continues to be employed on a continuing basis for an average of at least 20 hours each week by an eligible employer,
- (b) is not a major shareholder of an eligible employer,
- (c) is not entitled to a share of the profits and losses of an eligible employer equal to or greater than ten per cent,

- (d) is not entitled to receive, on dissolution of an eligible employer, a share of the net assets of the eligible employer equal to or greater than ten per cent,
- (e) is not a member of nor related to a member of a related group which,
 - (i) controls an eligible employer, or
 - (ii) would constitute a majority interest partner of an eligible employer if the eligible employer is a partnership and all partnership interests held by the members of the related group were deemed to be held by the same person, and
- (f) meets any other prescribed conditions;

"eligible employer", in respect of an eligible employee of an eligible business means,

- (a) the eligible business,
- (b) a corporation controlled by the eligible business, or
- (c) a partnership of which the eligible business is the majority interest partner;

"eligible investor", in respect of an employee ownership labour sponsored venture capital corporation, means an individual other than a trust who, at the time of subscribing for a Class A share of the employee ownership labour sponsored venture capital corporation,

- (a) is ordinarily resident in Ontario,
- (b) is an eligible employee of the eligible business, and
- (c) meets any other prescribed conditions;

4.- (1) A group of individuals representing eligible employees of an eligible business may apply jointly to the Minister, by filing the prescribed material in the prescribed manner, to be certified as the employee group for the purposes of this Part in respect of the eligible business.

(2) No group of individuals is eligible to be certified under this section in respect of an eligible business unless the Minister is satisfied that,

- (a) at a vote undertaken in accordance with prescribed rules in which all eligible employees of the eligible business were entitled to vote, at least fifty per cent of the votes cast were in favour of the establishment of an employee ownership labour sponsored venture capital corporation; or
- (b) if at least fifty per cent of the eligible employees of the eligible business are represented by one or more employee organizations, at least fifty per cent of such employees, voting at a vote undertaken in accordance with prescribed rules, voted in favour of the establishment of an employee ownership labour sponsored venture capital corporation.

(3) If the proposed investment is in respect of only part of the eligible business activities carried on by the eligible business, references in subsection (2) to eligible employees shall be deemed to be references to eligible employees employed in carrying on only those activities.

(4) The Minister may issue a certificate to the group certifying that the group is authorized to act as the employee group under this Part in respect of the eligible business if,

- (a) the Minister is satisfied that the applicants under subsection (1) meet the requirements imposed by this section and any other conditions that may be prescribed by the Minister; and
- (b) no other group holds a valid certificate issued under this section in respect of the eligible business.

(5) Only one employee group may hold at any particular time a valid certificate issued under this section in respect of a particular eligible business.

(6) Where the Minister is satisfied, prior to the registration of a corporation under this Part in respect of a particular eligible business, that an employee group certified under this section in respect of the eligible business does not meet or no longer meets the requirements for certification under this section, the Minister may revoke the certificate issued to the group.

5.- (1) An employee group certified under section 4 in respect of an eligible business may make application under this Part for the registration of a corporation as an employee ownership labour sponsored venture capital corporation to make investments in the eligible business.

(2) An application for registration of an employee ownership labour sponsored

venture capital corporation shall be made by filing with the Minister a proposal setting out,

- (a) the name of the corporation and the eligible business;
- (b) the location of the registered office or permanent establishment in Ontario of the corporation and the eligible business;
- (c) a business plan containing the prescribed information;
- (d) an investment plan for the corporation specifying,
 - (i) the amount of equity capital to be raised on the issue of shares of the corporation and the proposed method of distributing the shares for subscription by eligible employees,
 - (ii) the maximum number of shares that the corporation may issue and the maximum aggregate consideration for which shares may be issued,
 - (iii) the amount of the stated capital account of shares issued and to be issued and the amount of equity capital for which the shares were or will be issued,
 - (iv) the amounts and kinds of debt obligations, if any, issued or to be issued by the corporation,
 - (v) the restrictions on voting rights, if any, and on ownership of the shares of the corporation,
 - (vi) the terms and conditions for redemption of shares,
 - (vii) the estimated number of shareholders of the corporation,
 - (viii) details of the corporation's proposed investment policies, and
 - (ix) any other matter prescribed to be set out in the investment plan;
- (e) a human resources plan outlining the process through which employees will participate in the ongoing management of the eligible business and obtain any necessary retraining;
- (f) information on any plan to be carried out to protect the existing

pension benefits, if any, of employees of the eligible business;

- (g) the number of directors of the corporation and the names in full and the residence addresses of each;
 - (h) the names in full of the officers of the corporation and the residence addresses of each; and
 - (i) any other matter prescribed to be set out in the proposal.
- (3) A proposal shall be accompanied by,
- (a) a certified copy of the corporation's articles of incorporation;
 - (b) a true copy of all shareholders' agreements, partnership agreements and proposed agreements relating to the corporation, to which the corporation is a party or of which an officer or director of the corporation or the employee group, after making reasonable inquiry, has knowledge;
 - (c) a copy of any collective agreement in force in respect of any eligible employees or any other contract which provides for mandatory or voluntary participation of employees in the acquisition of shares of the employee ownership labour sponsored venture capital corporation; and
 - (d) any other material as may be prescribed.
- (4) The proposal shall be signed by two officers or one director and one officer of the corporation and shall contain a certificate in writing signed by one of them, certifying that the information contained in the proposal is complete and accurate;

6.- (1) No corporation shall be registered under this Part unless,

- (a) the corporation complies with all provisions of the legislation under which it is organized and this Act;
- (b) the corporation has never previously carried on business other than the business related to obtaining registration under this Act;
- (c) the articles of incorporation of the corporation provide that the authorized capital of the corporation shall consist only of Class A shares that are issuable only to eligible employees of the eligible business and are redeemable or transferable only in the

circumstances described in clause (e);

(d) the articles of incorporation of the corporation restrict the business of the corporation to acquiring control of the eligible business or part of its eligible business activities, providing capital through the acquisition and holding of voting shares or a partnership interest in respect of the eligible business as permitted under this Act and providing financial and managerial advice to the eligible business;

(e) the articles of incorporation of the corporation provide that,

(i) subject to the provision described in subclause (ii), the corporation may redeem a Class A share in respect of which a tax credit certificate has been issued under this Act only if the corporation is requested in writing by the holder of the share to redeem it and,

(A) where the share is held by the original purchaser, the corporation is notified in writing that the original purchaser,

(I) has retired from the workforce or has attained 65 years of age,

(II) has, after acquiring the share, become disabled and permanently unfit for work or become subject to a long term or terminal illness, or

(III) has involuntarily ceased to be an employee of the eligible business for a reason other than dismissal for cause,

(B) the share is held by an individual who notifies the corporation in writing that the share has devolved on the individual as a consequence of the death of a shareholder of the corporation,

(C) the share is held as an investment by a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has satisfied the conditions described in sub-sub-subclause (A)(I), (II) or (III),

(D) the redemption occurs more than 5 years after the day on which the share was issued,

(E) the redemption occurs within 5 years after the day on which the share was issued and,

(I) the holder of the share receives an amount on the redemption which does not exceed the amount that would have otherwise have been payable on the redemption less an amount equal to the tax credit percentage of the amount of equity capital received by the corporation on the original issue of the share, and

(II) the corporation remits to the Minister an amount equal to the tax credit percentage of the amount of the equity capital for which the share was originally issued, or

(F) the holder of the share has satisfied such other conditions as may be prescribed,

(ii) the corporation shall not, by reason of the original purchaser of a share described in subclause (i) having retired from the workforce or having attained 65 years of age, redeem the share until it has been issued and outstanding for at least two years,

(iii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which an investment certificate has been issued under this Act except where the transfer occurs more than 5 years after the day on which the share was issued, or where the corporation is notified in writing that the share is being transferred,

(A) to be held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant,

(B) as a consequence of the death of the original purchaser,

(C) at a time when the original purchaser has satisfied the

conditions described in sub-sub-subclause (i)(A)(I), (II) or (III), or

(D) in accordance with such other conditions as may be prescribed;

- (f) the articles of incorporation prohibit the corporation from lending money, guaranteeing loans or providing other financial assistance to,
 - (i) its shareholders or persons related to its shareholders;
 - (ii) any employee organization or employee group;
- (g) the total stated capital for Class A shares then issued and outstanding in consideration for equity capital is at least \$25,000;
- (h) the corporation has included in its name "(Employee Ownership)";
- (i) the investment plan contains a method of establishing the value for the Class A shares on a monthly basis by,
 - (i) an independent opinion from a qualified person, or
 - (ii) a formula referencing financial information of the corporation, that applies consistently over the life of the plan, does not provide for a premium for control or discount of minority interests and is computed without reference to any tax credit under the Income Tax Act or the Income Tax Act (Canada) allowed in respect of the purchase of the shares;
- (j) the corporation provides an undertaking in a form satisfactory to the Minister that the corporation shall provide to each holder of Class A shares at least semi- annually,
 - (i) the value established under clause (i), and the basis on which the value is established, and
 - (ii) disclosure with respect to major decisions of the corporation that may materially affect that value;
- (k) the Minister is satisfied that the proposed investment to be made by the corporation has been reviewed and approved by _____, which has determined that the proposed

investment is equitable and commercially viable, and any conditions imposed in connection therewith have been or will be met;

- (l) the corporation has established and is maintaining the trust fund required by this Act; and
- (m) the corporation meets such other conditions as may be prescribed.

(2) For the purposes of clause (1)(e) and section 29, the tax credit percentage means the aggregate of,

- (a) the percentage of the equity capital for which the share was originally issued which is applicable in the determination of any tax credit to which the original holder may be or may have been entitled under section 7 of the Income Tax Act; and
- (b) the percentage of the equity capital for which the share was originally issued which is applicable in the determination of any tax credit to which the original holder may be or may have been entitled under subsection 127.4(3) of the Income Tax Act (Canada).

(3) In determining the tax credit percentage in respect of a Class A share of an employee ownership labour sponsored venture capital corporation which is the subject of a redemption, transfer or other disposition, the following rules apply:

1. The holder of the share shall be deemed to redeem, transfer or otherwise dispose of his or her Class A shares of the corporation in the order in which they were originally issued.
2. Any registered retirement savings plan which holds Class A shares of the corporation which have not been issued and outstanding more than five years shall be deemed to redeem, transfer or otherwise dispose of the shares in the order in which they were originally issued.
3. Class A shares issued in consideration for the first \$3,500 invested by a shareholder in the labour sponsored venture capital corporation in a calendar year or within 60 days thereafter, shall be deemed to have been issued before any Class A shares issued to the shareholder in consideration for any amounts in excess of \$3,5000 invested in Class A shares of the corporation during the same time period.

- 7.- (1) A corporation is entitled to registration by the Minister except where,
- (a) the provisions of this Part have not been satisfied; or
 - (b) the employee group fails to file the material required by this Act or the regulations.

(2) Subject to section 32, the Minister may refuse to register a corporation where in the Minister's opinion the corporation is disentitled to registration under subsection (1) of this section.

(3) Subject to section 32, the Minister may refuse to register a corporation where in the Minister's opinion the proposed investment or the actions of the corporation, the eligible business or the employee group do not comply with the spirit and intent of this Act and the regulations.

8. If the corporation and the employee group comply with this Act, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the proposal the word, "Registered" and the day, month and year of the registration thereof;
- (b) file one of the duplicates in the Minister's office;
- (c) place the name of the corporation in the register of labour sponsored venture capital corporations as an employee ownership labour sponsored venture capital corporation; and
- (d) issue to the corporation a certificate of registration to which the Minister shall affix the other duplicate.

9.- (1) By the end of the twelfth month following the date of issue of a Class A share of a labour sponsored venture capital corporation registered under this Part, the labour sponsored venture capital corporation shall have invested, and shall thereafter continue to keep invested, in an eligible investment an amount, calculated in the prescribed manner, equal to at least 80 per cent of the equity capital received on the issue of the Class A share.

(2) The employee ownership labour sponsored venture capital corporation shall have acquired immediate control over the fundamental business decisions of the eligible business and within a reasonable period of time, as outlined in the business plan, shall have acquired majority ownership.

(3) An employee ownership labour sponsored venture capital corporation shall

not invest more than the maximum proposed amount set out in its business plan as filed with the Minister and approved by _____, unless it first obtains the consent of _____.

10.- (1) An investment shall be an eligible investment of a labour sponsored capital venture corporation registered under this Part if,

- (a) it is made in the eligible business, a corporation referred to in subsection 11(1) or a Canadian partnership referred to in subsection 11(2), in the manner described in the proposal filed under this Part, and complies with all terms and conditions which may have been imposed by the _____ in connection with granting approval of the proposed investment;
- (b) the corporation or partnership in which the investment is made pays 25 per cent or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment located in Ontario;
- (c) the investment is the purchase of,
 - (i) in the case of an investment in an eligible business that is a corporation or in a corporation referred to in subsection 11(1), voting shares issued by the corporation in exchange for a consideration paid in money, or
 - (ii) in the case of an investment in an eligible business that is a Canadian partnership or in a Canadian partnership referred to in subsection 11(2), an ownership interest in the partnership granted in exchange for a consideration paid in money;
- (d) at the time of the investment and throughout a period of at least _____ years, the eligible business was primarily engaged in one or more eligible business activities; and
- (e) the investment is not used nor intended to be used for the purpose of,
 - (i) relending,
 - (ii) investment in land except land that is incidental and ancillary to the eligible business activity or activities in which the eligible business is primarily engaged,

- (iii) reinvestment outside Canada,
- (iv) purchasing or acquiring the securities of any person,
- (v) financing the purchase or sale of goods or services, provided to the eligible business by or through any shareholder of the labour sponsored venture capital corporation or any person related to a shareholder, unless the labour sponsored venture capital corporation is widely held,
- (vi) the payment of dividends,
- (vii) the payment of drawings to partners of the eligible business, or
- (viii) any prescribed purpose or use;

(2) For the purposes of this section, a labour sponsored venture capital corporation is widely held if the corporation has ten or more shareholders, each holding not more than 10 percent of the issued and outstanding voting shares of the corporation, and none of the shareholders is related to another shareholder.

11.- (1) If the business plan approved by _____ provides for the investment by the employee ownership labour sponsored venture capital corporation to be in a new corporation incorporated solely to continue carrying on one or more eligible business activities of the eligible business or to be amalgamated with the eligible business, an investment in voting shares issued by the new corporation shall be considered to be an investment in an eligible business if the investment complies with the approved business plan.

(2) If the business plan approved by _____ provides for the investment by the employee ownership labour sponsored venture capital corporation to be made in a new Canadian partnership established for the purpose of carrying on one or more eligible business activities of the eligible business, an investment in a partnership interest in the new partnership shall be considered to be an investment in an eligible business, if the investment complies with the approved business plan.

PART III

LABOUR SPONSORED INVESTMENT
FUND CORPORATIONS

12.- (1) In this Part,

"eligible business" means a taxable Canadian corporation or Canadian partnership,

- (a) that pays 50 per cent or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment of the eligible business located in Ontario,
- (b) that has 50 per cent or more of its full-time employees employed in respect of eligible business activities carried on by the corporation in Ontario,
- (c) whose total assets, together with the total assets of all related corporations and partnerships, do not exceed \$35,000,000, as calculated in the prescribed manner, or such other amount as may be prescribed,
- (d) that together with all related corporations and partnerships does not have more than 500 employees, calculated in the prescribed manner, or such other number of employees as may be prescribed, and
- (e) that, except for failing to satisfy the provisions of this clause, would have been an eligible business for the purposes of this Part, primarily engaged in eligible business activities for at least two years, or the total length of time the corporation or Canadian partnership has been carrying on any business if it has carried on business less than two years;

"eligible investor", in respect of a corporation registered under this Part, means an individual other than a trust who, at the time of subscribing for a Class A share of the corporation,

- (a) is ordinarily resident in Ontario, and
- (b) meets any other prescribed conditions;

13.- (1) An employee organization may make application under this Part for registration of a corporation as a labour sponsored venture capital corporation to make

investments in eligible businesses if,

- (a) the corporation was incorporated under the Business Corporations Act, 1982; or
- (b) the corporation is registered under Part X.3 of the Income Tax Act (Canada) and has a permanent establishment in Ontario.

(2) An application under this section shall be made by filing with the Minister a proposal setting out,

- (a) the name of the corporation;
- (b) the location of the registered office or permanent establishment in Ontario of the corporation;
- (c) an investment plan for the corporation specifying,
 - (i) the amount of equity capital to be raised on the issue of each class of shares of the corporation,
 - (ii) the classes and series of shares, the maximum number of shares that the corporation is authorized to issue of each class and series and the maximum aggregate consideration for which all shares of each class and series may be issued,
 - (iii) the amount of the stated capital account of each class and series of shares issued and to be issued and the amount of equity capital for which the shares were or will be issued,
 - (iv) the amounts and kinds of debt obligations, if any, issued by the corporation,
 - (v) any restrictions on ownership and voting rights of the shares of the corporation,
 - (vi) the terms and conditions for redemption of shares,
 - (vii) the estimated number of shareholders of the corporation,
 - (viii) details of the corporation's proposed investment policies, and
 - (ix) any other matter prescribed to be set out in the investment plan;

- (d) the number of directors of the corporation and the names in full and the residence addresses of each;
 - (e) the names in full of the officers of the corporation and the residence addresses of each; and
 - (f) any other matter prescribed to be set out in the proposal.
- (3) A proposal shall be accompanied by,
- (a) a certified copy of the corporation's articles of incorporation;
 - (b) a true copy of all shareholders' agreements, partnership agreements and proposed agreements relating to the corporation to which the corporation is a party or of which an officer or director of the corporation or the employee organization, after making reasonable inquiry, has knowledge;
 - (c) any other material as may be prescribed.
- (4) The proposal shall be signed by two officers or one director and one officer of the corporation and shall contain a certificate in writing signed by one of them, certifying that the information contained in the proposal is complete and accurate;

14.- (1) No corporation shall be registered under this Part unless,

- (a) the corporation complies with all provisions of the legislation under which it is organized, this Act and, in the case of a corporation referred to in clause 13(1)(b), the Income Tax Act (Canada);
- (b) the corporation has never previously carried on business other than the business related to obtaining registration under this Act or the Income Tax Act (Canada);
- (c) the articles of incorporation of the corporation provide that the authorized capital of the corporation shall consist only of,
 - (i) Class A shares that are issuable only to eligible investors and are redeemable or transferable only in the circumstances described in clause (e),
 - (ii) Class B shares that are issuable only to and may be held only by an employee organization, and

- (iii) such additional classes of shares as may be authorized, where the rights, privileges, restrictions and conditions attached to the shares are approved by the board of directors of the corporation and by the Minister;
- (d) the articles of incorporation of the corporation restrict the business of the corporation to assisting the development of eligible businesses and to creating, maintaining and protecting jobs by providing financial and managerial advice to eligible businesses and by providing capital to eligible businesses through the acquisition and holding of shares and unsecured debt obligations issued by eligible businesses that are corporations, and ownership interests of and unsecured debt obligations issued by eligible businesses that are Canadian partnerships, as permitted under this Act;
- (e) the articles of incorporation of the corporation provide that,
 - (i) subject to the provision described in subclause (ii), the corporation may redeem a Class A share in respect of which a tax credit certificate has been issued under this Act only if the corporation is requested in writing by the holder of the share to redeem it and,
 - (A) where the share is held by the original purchaser, the corporation is notified in writing that the original purchaser,
 - (I) has retired from the workforce or has attained 65 years of age, or
 - (II) has, after acquiring the share, become disabled and permanently unfit for work or become subject to a long term or terminal illness,
 - (B) the share is held by an individual who notifies the corporation in writing that the share has devolved on the individual as a consequence of the death of a shareholder of the corporation,
 - (C) the share is held as an investment by a registered retirement savings plan under which, the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has satisfied the conditions described in

sub-sub-subclause (A)(I) or (II),

(D) the redemption occurs more than 5 years after the day on which the share was issued,

(E) the redemption occurs within 5 years after the day on which the share was issued and,

(I) the holder of the share receives an amount on the redemption which does not exceed the amount that would have otherwise have been payable on the redemption less 40 per cent, or the prescribed percentage, of the amount of equity capital received by the corporation on the original issue of the share, and

(II) the corporation remits to the Minister 40 per cent, or the prescribed percentage, of the equity capital for which the share was originally issued, or

(G) the holder of the share has satisfied such other conditions as may be prescribed,

(ii) the corporation shall not, by reason of the original purchaser of a share described in subclause (i) having retired from the workforce or having attained 65 years of age, redeem the share until it has been issued and outstanding for at least two years,

(iii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which an investment certificate has been issued under this Act, except where the transfer occurs more than 5 years after the day on which the share was issued, or where the corporation is notified in writing that the share is being transferred,

(A) to be held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant,

(B) as a consequence of the death of the original purchaser,

or

(C) in accordance with such other conditions as may be prescribed;

- (f) the articles of incorporation prohibit the corporation from lending money, guaranteeing loans or providing other financial assistance to,
 - (i) its shareholders or persons related to its shareholders,
 - (ii) any employee organization or employee group;
- (g) the total stated capital for classes and series of voting shares issued in consideration for equity capital is at least \$25,000;
- (h) the investment plan contains a method of establishing the value for the Class A shares on a monthly basis by,
 - (i) an independent opinion from a qualified person, or
 - (ii) a formula referencing financial information of the corporation, that applies consistently over the life of the plan, does not provide for a premium for control or discount of minority interests and is computed without reference to any tax credit under the Income Tax Act or the Income Tax Act (Canada) allowed in respect of the purchase of the shares;
- (i) the corporation provides an undertaking in a form satisfactory to the Minister that the corporation shall provide to each holder of Class A shares at least semi-annually,
 - (i) the value established under clause (h), and the basis on which the value is established, and
 - (ii) disclosure with respect to major decisions of the corporation that may materially affect that value;
- (j) the corporation has established and is maintaining the trust fund required by this Act; and
- (k) the corporation meets such other conditions as may be prescribed.

(2) For the purposes of clause (1)(c), the term "eligible investors" means all individuals who are ordinarily resident in Canada and who would be eligible investors under this Part if they were ordinarily resident in Ontario.

- 15.- (1) A corporation is entitled to registration by the Minister except where,
- (a) the provisions of this Part have not been satisfied; or
 - (b) the employee organization fails to file the material required by this Act or the regulations.

(2) Subject to section 32, the Minister may refuse to register a corporation where in the Minister's opinion the corporation is disentitled to registration under subsection (1) of this section.

(3) Subject to section 32, the Minister may refuse to register a corporation where in the Minister's opinion the proposed investment or the actions of the corporation or the employee organization do not comply with the spirit and intent of this Act and the regulations.

16. If the employee organization and the corporation comply with this Act, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the proposal the word, "Registered" and the day, month and year of the registration thereof;
- (b) file one of the duplicates in the Minister's office;
- (c) place the name of the corporation in the register of labour sponsored venture capital corporations; and
- (d) issue to the corporation a certificate of registration to which the Minister shall affix the other duplicate.

17.- (1) Within the first two years after the date of issue of any Class A shares of a labour sponsored venture capital corporation registered under this Part, and throughout the next twelve months, the labour sponsored venture capital corporation shall have acquired and maintained eligible investments, the acquisition cost of which shall be an amount, calculated in the prescribed manner, equal to at least 40 percent of the equity capital received on the issue of the Class A shares.

(2) After the end of the fourth year following the date of issue of Class A shares, the labour sponsored venture capital corporation shall have acquired and shall

maintain eligible investments the acquisition cost of which shall be an amount, calculated in the prescribed manner, equal to at least 70 percent of the equity capital received on the issue of the Class A shares.

(3) For the purposes of this section, where a labour sponsored venture capital corporation disposes of an eligible investment, it shall be deemed to maintain the investment for a period of six months following the date of the disposition.

(4) In the case of a labour sponsored venture capital corporation referred to in clause 13(1)(b), "equity capital received on the issue of the Class A shares" includes only the equity capital received on the issue of Class A shares to shareholders of the corporation ordinarily resident in Ontario.

18.- (1) An investment shall be an eligible investment of a labour sponsored venture capital corporation registered under this Part if,

- (a) it is made in an eligible business;
- (b) the eligible business is primarily engaged in one or more eligible business activities carried on in Canada;
- (c) the investment is the purchase from the eligible business by the labour sponsored venture capital corporation of,
 - (i) voting shares or an unsecured debt obligation issued by the eligible business in exchange for a consideration paid in money, if the eligible business is a corporation, or
 - (ii) an ownership interest in the eligible business or an unsecured debt obligation issued by the eligible business in exchange for a consideration paid in money, if the eligible business is a Canadian partnership;
- (d) if the eligible business is a corporation, the total number of voting shares of the eligible business acquired by the labour sponsored venture capital corporation does not exceed 50 per cent of the issued and outstanding voting shares of the eligible business;
- (e) if the eligible business is a Canadian partnership, the labour sponsored venture capital corporation does not become a majority interest partner as a result of the investment;
- (f) the investment is not used or intended to be used by the eligible business for the purpose of,

- (i) relending,
 - (ii) investment in land except land that is incidental and ancillary to the eligible business activity or activities in which the eligible business is primarily engaged,
 - (iii) reinvestment outside Canada,
 - (iv) purchasing or acquiring the securities of any person,
 - (v) financing the purchase or sale of goods or services provided to the eligible business by or through any shareholder of the labour sponsored venture capital corporation or any person related to a shareholder, unless the labour sponsored venture capital corporation is widely held,
 - (vi) the payment of dividends,
 - (vii) the payment of drawings to partners of the eligible business,
 - (viii) the return of capital to a shareholder or partner of the eligible business,
 - (ix) the payment of the principal amount of outstanding liabilities, other than trade accounts payable or a liability of a prescribed nature,
 - (x) carrying on any business outside of Canada, or
 - (xi) any prescribed purpose or use; and
- (g) the investment does not constitute more than ten per cent of the equity capital then issued and outstanding of the labour sponsored venture capital corporation received from eligible shareholders ordinarily resident in Ontario.

(2) For the purposes of this section, a labour sponsored venture capital corporation is widely held if the corporation has ten or more shareholders, each holding not more than 10 percent of the issued and outstanding voting shares of the corporation, and none of the shareholders is related to another shareholder.

(3) In determining the percentage of shares of an eligible business held by a labour sponsored venture capital corporation registered under this Part or whether the labour sponsored venture capital corporation is a majority partner of an eligible business,

- (a) voting shares of the eligible business held by a shareholder of the labour sponsored venture capital corporation, and by any persons related to that shareholder, shall be deemed to be held by the labour sponsored venture capital corporation;
- (b) partnership interests in an eligible business which is a Canadian partnership owned by a shareholder of the labour sponsored venture capital corporation, and by any persons related to that shareholder, shall be deemed to be owned by the labour sponsored venture capital corporation; and
- (c) options, warrants and rights in respect of voting shares of or partnership interests in the eligible business issued by any person other than the eligible business and held by a shareholder of the labour sponsored venture capital corporation, or by any person related to that shareholder, shall be deemed to have been exercised and the voting shares in respect thereof or the partnership interest to be held by the labour sponsored venture capital corporation.

(4) Despite clauses (1)(c) and (f), in the case of an investment in an eligible business that at the time of the investment and immediately thereafter is controlled by an employee ownership labour sponsored venture capital corporation registered under Part II, the investment may represent a replacement of outstanding or previously outstanding liabilities or shareholders' equity of the eligible business, provided that at least two-thirds of the aggregate eligible investments made by the labour sponsored venture capital corporation registered under this Part represents net new investment capital of eligible businesses, as determined in the prescribed manner.

PART IV

ADMINISTRATION

19.- (1) Every labour sponsored venture capital corporation shall establish and maintain a trust fund, to be held by a trustee on behalf of that corporation, in which the following amount or amounts of money shall be held in trust, separate and apart from the corporation's other money, for the benefit of the corporation and the Crown jointly, to be dealt with only in accordance with this Act:

- (a) where the labour sponsored venture capital corporation is an employee ownership labour sponsored venture capital corporation, an amount equal to the aggregate of,

- (i) 40 per cent, or the prescribed percentage, of all amounts received by the corporation as equity capital on the issue of Class A shares, to the extent that the amounts received are attributable to the first \$3,500 received by the corporation from any eligible investor in that calendar year, or within 60 days immediately following that calendar year, and in respect of which a tax credit certificate may be issued under this Act, and
 - (ii) 30 per cent of all amounts received by the corporation as equity capital on the issue of Class A shares, to the extent that the amounts received are attributable to any amounts exceeding \$3,500 but not exceeding \$15,000 which were received by the corporation from any eligible investor in that calendar year, or within 60 days immediately following that calendar year, and in respect of which a tax credit certificate may be issued under this Act; and
- (b) where the labour sponsored venture capital corporation is not an employee ownership labour sponsored venture capital corporation, 40 percent, or the prescribed percentage, of all amounts received by the corporation as equity capital, to the extent that the amounts received are attributable to the first \$3,500 received by the corporation from any eligible investor in that calendar year, or within 60 days immediately following that calendar year, and in respect of which a tax credit certificate may be issued under this Act.

(2) Subject to subsection (5), while any amount is held in trust under subsection (1) in respect of a corporation registered under Part II, the Minister, if satisfied that the corporation has made or is about to make an eligible investment that complies with the business plan approved under this Act and has paid the purchase price in full in money or will use the amount to be permitted to be paid out by the Minister in payment of the purchase price of the eligible investment, shall permit payment from the fund of an amount equal to the aggregate of,

- (a) 50 per cent or the prescribed percentage of,
 - (i) that portion of the purchase price paid or to be paid by the corporation to acquire the eligible investment that does not exceed,
 - (A) the aggregate of the first \$3,500 received by the corporation from any eligible investor in any particular

calendar year, or within 60 days immediately thereafter,

less

(B) where the corporation has made one or more previous eligible investments in the eligible business, the aggregate of all amounts, each of which was included in the calculation of the amount determined under this subclause in respect of each previous eligible investment, and

- (b) 37.5 per cent of the amount, if any, by which the purchase price paid or to be paid by the corporation to acquire the eligible investment exceeds the portion of the purchase price determined under clause (a).

(3) Subject to subsection (5), while any amount is held in trust under subsection (1) in respect of a corporation registered under Part III, the Minister shall permit payment from the fund of an amount equal to 57.14 per cent, or the prescribed percentage, of the purchase price paid by the corporation to acquire an eligible investment, if the Minister is satisfied that the purchase price of the eligible investment has been paid in full in money or that the amount to be permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

(4) Subject to subsection (5), while any amount is held in trust under subsection (1), the Minister may permit payment from the fund to a shareholder of the labour sponsored venture capital corporation, of an amount calculated in the prescribed manner, when Class A shares of the labour sponsored venture capital corporation in respect of which a tax credit certificate has been issued under this Act are acquired by it by way of a redemption that is not prohibited by the provisions of the articles of incorporation of the labour sponsored venture capital corporation that are required by this Act.

(5) The money held in trust in accordance with subsection (1) shall not be paid out to any person or corporation unless the Minister has consented in writing to the payment.

(6) Subject to section 32, the Minister may refuse to permit a payment from the trust fund if,

- (a) the corporation or the employee group, or the employee organization as applicable, fails to comply with any provision of this Act or the regulations; or

- (b) the Minister is of the opinion that the labour sponsored venture capital corporation, its officers or directors, or its shareholders are conducting their business and affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of obtaining a tax credit to which they would not otherwise be entitled.

(7) Subject to subsections (6) and (8), interest earned on the trust fund established in accordance with subsection (1) shall remain the property of the labour sponsored venture capital corporation.

(8) The Minister may require the corporation to pay or cause to be paid to the Crown all or part of the interest earned on the trust fund established in accordance with subsection (1) where,

- (a) the registration of the corporation is revoked under section 28,
- (b) the corporation fails to comply with section 9 or 17, as applicable, or
- (c) investments made by the corporation do not comply with the Act.

(9) Where the registration of a labour sponsored venture capital corporation is revoked or surrendered, the amount then remaining in the trust fund established under subsection (1) is immediately payable to the Crown, and the receipt of the Minister therefor is a full and sufficient discharge to any trustee for such money, or to any other person having control of the trust funds, for the payment over of such money to the Crown, and such payment is a full and complete discharge to the person making it and for any claim to such payment by any person that claims to be entitled to the funds.

(10) Where any person fails to make the payment to the Crown required by subsection (9), such person is liable to the Crown for the amount that should have been paid under subsection (9).

20.- (1) A labour sponsored venture capital corporation shall maintain its assets in,

- (a) investments that are eligible investments for the particular labour sponsored venture capital corporation;
- (b) reserves;
- (c) investments that were eligible investments at the time they were acquired by the labour sponsored venture capital corporation; or

(d) such other form as may be prescribed.

(2) For the purposes of subsection (1), "reserves" means,

(a) property described in any of subparagraphs 204(e)(i), (ii), (iii), (vii) and (viii) of the Income Tax Act (Canada);

(b) deposits in or guaranteed investment certificates issued by the Province of Ontario Savings Office; or

(c) such other investments as may be prescribed.

(3) The annual expenses of a labour sponsored venture capital corporation shall not exceed a prescribed amount, determined in the prescribed manner.

21. A labour sponsored venture capital corporation registered under this Act shall not invest or maintain an investment in a business which is or was at any time an eligible business if,

(a) any of the shares of or partnership interests in such business are held by, or were at any time during the two years immediately preceding the investment held by,

(i) a major shareholder or a person related to a major shareholder of the labour sponsored venture capital corporation, or

(ii) an officer or director or a person related to an officer or director of the labour sponsored venture capital corporation that proposes to invest or has invested in such business; or

(b) in the case of a corporation registered under Part III,

(i) the business is a corporation and more than 50 per cent of the issued and outstanding voting shares of the business are or would be held by the labour sponsored venture capital corporation, its shareholders and persons related to its shareholders;

(ii) the business is a Canadian partnership and the corporation would become or is a majority interest partner of the partnership; or

(iii) as a result of the investment, the labour sponsored venture

capital corporation has invested more than \$10,000,000 in securities issued by the business.

22.- (1) In this section, a material change occurs if the investment made by a labour sponsored venture capital corporation ceases to be an eligible investment.

(2) A labour sponsored venture capital corporation shall notify the Minister in the prescribed form of any material change in any of its investments within thirty days of the occurrence thereof.

(3) Where there is a material change, the investment by a labour sponsored venture capital corporation shall remain an eligible investment, with respect to investments made before the material change, for a period of _____ from the date of the material change.

23. Every corporation that was registered under this Act at any time during a fiscal year shall appoint an auditor and the corporation shall submit to the Minister within six months after the end of the fiscal year its financial statements for the year and the auditor's report thereon, prepared in accordance with prescribed rules.

24.- (1) Within ninety days after each annual anniversary of the date of its registration, every labour sponsored venture capital corporation shall complete and file with the Minister, a return in the prescribed form setting out, as of the anniversary date, the information required by the return.

(2) A labour sponsored venture capital corporation shall notify the Minister, in the prescribed form, at least twenty-one days before carrying out any proposed action involving,

- (a) any action described under clauses 181(1)(a) to (i) of the Business Corporations Act, 1982, or any similar action under the legislation under which the corporation is organized, that it proposes to place before its shareholders for approval;
- (b) any action by the corporation which would have the effect of reducing the stated capital account of its Class A shares;
- (c) the surrender, redemption or conversion of any Class A share of the corporation;
- (d) the disposition, sale or retirement of any eligible investment;
- (e) the entering into, or amendment of, any shareholder agreement or partnership agreement relating to the labour sponsored venture

capital corporation, to which the labour sponsored venture capital corporation is a party or of which an officer or director after reasonable inquiry has knowledge, or relating to any corporation or partnership in which the labour sponsored venture capital corporation maintains an investment; or

(f) an amendment to its articles of incorporation.

(3) The Minister may, in his or her discretion, enlarge the time for filing any notice or return under this section.

25. The Minister may at any time by notice require any labour sponsored venture capital corporation or any corporation or partnership in which the labour sponsored venture capital corporation has invested to file within the time specified in the notice a return upon any subject connected with its affairs and, in the opinion of the Minister, relevant to the administration or enforcement of this Act.

26.- (1) Except as otherwise provided in this Act, the Minister may allow a tax credit under the Income Tax Act with respect to equity capital invested by eligible shareholders in Class A shares issued by a labour sponsored venture capital corporation.

(2) The Minister shall not allow a tax credit to any shareholder of a labour sponsored venture capital corporation if the labour sponsored venture capital corporation has failed to establish and maintain a trust fund to the satisfaction of the Minister in accordance with this Act.

(3) Subject to section 32, where the Minister is of the opinion that the labour sponsored venture capital corporation, its officers or directors, or its shareholders are conducting their business and affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of obtaining a tax credit to which they would not otherwise be entitled, the Minister may refuse to allow a tax credit under the Income Tax Act.

27.- (1) An employee ownership labour sponsored venture capital corporation shall apply to the Minister, on behalf of each eligible investor who has paid during the calendar year, or within 60 days immediately following that calendar year, for Class A shares issued by the corporation, for a tax credit certificate in respect of a labour sponsored venture capital corporation tax credit, to be claimed by the eligible investor under the Income Tax Act, equal to the aggregate of,

(a) 20 per cent of all amounts received by the corporation as equity capital on the issue of the Class A shares, to the extent that the amounts received are attributable to the first \$3,500 received by the corporation from the eligible investor during that time period; and

- (b) 30 per cent of all amounts received by the corporation as equity capital on the issue of the Class A shares, to the extent that the amounts received are attributable to any amounts exceeding \$3,500 but not exceeding \$15,000 received by the corporation from the eligible investor during that time period.

(2) A labour sponsored venture capital corporation registered under Part III shall apply to the Minister, on behalf of each eligible investor who has paid during the calendar year, or within 60 days immediately following that calendar year, for Class A shares issued by the corporation, for a tax credit certificate in respect of a labour sponsored venture capital corporation tax credit, to be claimed by the eligible investor under the Income Tax Act, equal to 20 per cent of the lesser of,

- (a) the total amount of money received by the corporation as equity capital from the eligible investor during that time period for Class A shares issued by the corporation; or
- (b) \$3,500.

(3) On receipt of an application under subsection (1) or (2), the Minister shall, subject to subsection (4) and (5), issue a tax credit certificate to the eligible investor indicating the amount of the tax credit and the taxation year in respect of which the tax credit may be claimed, unless the Minister considers that the corporation or its directors, officers or shareholders are conducting the business or affairs of the corporation in a manner that is contrary to the spirit and intent of this Act, whether or not there has been a contravention of this Act or the regulations.

(4) No tax credit certificate shall be issued under this section in respect of any amounts exceeding the first \$150,000 paid to an employee ownership labour sponsored venture capital corporation by an eligible investor in consideration for the issue of Class A shares of the corporation to the eligible investor.

(5) The Minister shall not issue a tax credit certificate under this section unless the Minister is satisfied that,

- (a) the corporation and its eligible investors are complying with the corporation's investment plan and, in the case of an employee ownership labour sponsored venture capital corporation, the corporation's business plan and human resources plan as approved;
- (b) other than where permitted by the regulations, the Class A shares to which the tax credit relates do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,

- (i) to claim a tax credit under the Income Tax Act or the Income Tax Act (Canada), other than a labour sponsored venture capital corporation tax credit under the Income Tax Act or section 127.4 of the Income Tax Act (Canada), against tax otherwise payable,
 - (ii) to claim a deduction from income under the Income Tax Act or the Income Tax Act (Canada), or
 - (iii) to receive any other financial assistance from any government, municipality or public authority;
 - (c) no tax credit has been previously allowed under the Income Tax Act or the Income Tax Act (Canada) in respect of the shares to which the tax credit certificate relates;
 - (d) the Class A shares to which the tax credit certificate relates were purchased and acquired directly from the labour sponsored venture capital corporation issuing the shares; and
 - (e) there has been compliance with any other prescribed conditions.
- (6) An application under subsection (1) or (2) shall be made by filing with the Minister,
- (a) an application containing the prescribed information signed by the secretary and one authorized officer of the labour sponsored venture capital corporation that has issued the Class A shares in respect of which a tax credit certificate is sought; and
 - (b) such additional material as may be prescribed by the Minister.
- (7) The Minister may enter into an arrangement with a labour sponsored venture capital corporation, upon such terms and conditions as the Minister considers advisable, whereby the corporation is authorized as agent for the Minister to issue tax credit certificates under this section on behalf of the Minister.
- 28.- (1) Subject to section 32, the Minister may revoke the registration of a labour sponsored venture capital corporation if,
- (a) the labour sponsored venture capital corporation fails to maintain the required level of eligible investments;
 - (b) the labour sponsored venture capital corporation redeems, retracts

or registers the transfer of any Class A share contrary to the prohibitions required by this Act to be contained in the corporation's articles of incorporation;

- (c) the labour sponsored venture capital corporation is registered under Part II and merges with another corporation by any means, including amalgamation with or the winding-up of a corporation, unless,
 - (i) the date of the merger is at least five years after the last date on which any Class A shares were issued by the corporation, or
 - (ii) the proposed action has been approved in advance by _____;
- (d) the labour sponsored venture capital corporation fails to comply with or contravenes any provision of this Act or the regulations;
- (e) the Minister is of the opinion that the labour sponsored venture capital corporation, its officers or directors or shareholders, or the employee organization or employee group connected with it, are conducting their business or affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of enabling any individual to obtain a tax credit to which he or she would not otherwise be entitled; or
- (f) the Minister is advised that _____ has determined that the labour sponsored venture capital corporation is no longer in compliance with its investment plan or, where applicable, its business plan or human resources plan as approved.

(2) If a labour sponsored venture capital corporation does not comply with the provisions of this Act or the regulations, but the Minister is of the opinion that the corporation is meeting the spirit and intent of this Act, the Minister, may, for such time as the Minister considers appropriate, refrain from revoking the registration of any corporation.

(3) Upon the request of a corporation registered under this Act, the Minister may accept the surrender of the registration of the corporation if,

- (a) the corporation pays to the Minister the amount, if any, required to be paid under section 29; and

- (b) the corporation files with the Minister the prescribed information and meets such other conditions as may be prescribed.

29.- (1) Where the registration of a labour sponsored venture capital corporation is revoked by the Minister, or the labour sponsored venture capital corporation makes a request under section 28 to surrender its registration under this Act, the labour sponsored venture capital corporation shall immediately pay to the Minister an amount of money equal to the total amount of all tax credits for which tax credit certificates were issued or may be issued under this Act in respect of all Class A shares of the corporation then outstanding which were issued within the five years immediately preceding the date of the revocation or surrender of registration.

(2) If a labour sponsored venture capital corporation fails to maintain the required level of eligible investments, the corporation is liable to pay to the Crown, in addition to any amount that may become payable under subsection (1), an amount equal to _____, together with interest at the prescribed rate from _____, and such amount shall be deemed to be an additional amount of tax payable by the corporation under the Corporations Tax Act, whether or not an assessment therefor is issued under that Act.

(3) Where a labour sponsored venture capital corporation proposes to wind-up or dissolve, the labour sponsored venture capital corporation shall immediately pay to the Minister an amount of money equal to the total amount of all tax credits for which tax credit certificates were issued or may be issued under this Act in respect of all Class A shares of the corporation then outstanding which were issued within the five years immediately preceding the wind-up or dissolution.

(4) Where a person as the holder of a Class A share issued by a labour sponsored venture capital corporation purports to sell or otherwise transfer the share or a beneficial interest in the share contrary to the prohibition required by this Act to be included in the articles of incorporation of the labour sponsored venture capital corporation, whether or not the transfer is registered by the labour sponsored venture capital corporation, the person shall immediately pay to the Minister an amount of money equal to,

- (a) if the share was issued by a corporation registered under Part II, the tax credit percentage of the amount of the equity capital for which the share was originally issued; or
- (b) if the share was issued by a corporation registered under Part III, 40 per cent, or the prescribed percentage of the equity capital for which the share was originally issued.

(5) Where the amount payable under subsection (4) is not paid, the transferee

of the Class A share or the beneficial interest in the share is jointly and severally liable with the transferor of the share or the interest in the share for the amount payable and is entitled to deduct or withhold from any amount paid or payable by him or her to the transferor or otherwise recover from the transferor any amount paid under this subsection.

(6) Where a person as the holder of a Class A share issued by a labour sponsored venture capital corporation, the transfer of which would be prohibited at that time by the articles of incorporation of the corporation, receives an amount in respect of the reduction of the stated capital account attributable to such Class A shares, the person shall immediately pay to the Minister an amount of money equal to,

- (a) if the share was issued by a corporation registered under Part II, the tax credit percentage applied to the amount so received, and
- (b) if the share was issued by a corporation registered under Part III, 40 per cent, or the prescribed percentage, of the amount so received.

(7) The labour sponsored venture capital corporation referred to in subsection (6) is jointly and severally liable with the shareholder for the amount payable by the shareholder under subsection (6), and is entitled to deduct or withhold from any amount paid or payable by it to the shareholder or to otherwise recover from the shareholder any amount paid by it under this subsection.

(8) Any amount required to be deducted from the redemption amount and remitted to the Minister under sub-subclause 6(1)(e)(i)(F) or 14(1)(e)(i)(F) may be reduced by amounts paid under subsections (1), (3), (4), (5), (6) or (7) that may reasonably be considered to relate to the share being redeemed.

30.- (1) Any amount required under this Act to be paid to the Minister by a labour sponsored venture capital corporation or any other corporation shall be deemed to be a tax imposed upon the corporation under Part II of the Corporations Tax Act, payable on the date the liability arose, and may be collected and enforced together with the prescribed interest, if any, in accordance with the provisions of that Act.

(2) Sections 92 to 95 and section 96 of the Corporations Tax Act apply and in the application thereof,

- (a) references to a "corporation" shall be read as references to a "person"; and
- (b) references to "tax" shall be read as references to an amount payable under this Act to the Minister or the Crown.

31.- (1) Where any amount is payable to the Minister or the Crown or is deemed to be so payable under this Act, the Minister may, by Notice of Demand in writing to the person or corporation by whom such payment is owing or claimed to be owing, demand payment immediately or in such number of days as are specified in the demand, and if the payment is not made as demanded, the Minister may recover and collect the amount thereof by any of the remedies or procedures provided for in this Act.

(2) Even if an objection or other proceeding under section 32 has been commenced or may be commenced, every amount demanded under subsection (1) remains payable and recoverable until the demand therefor is revoked in writing by the Minister.

32.- (1) If the Minister proposes,

- (a) to refuse to register a corporation under this Act;
- (b) to revoke the registration of a labour sponsored venture capital corporation;
- (c) to refuse to permit payment from the trust fund established under this Act, where that refusal does not result from a determination that any investment or proposed investment is not an eligible investment; or
- (d) to refuse to issue a tax credit certificate under this Act; the Minister shall serve notice of his proposal, together with written reasons therefor, on the corporation.

(2) If the Minister has not registered a corporation under this Act within four months of the date on which all material and information required by this Act to be filed as part of or with the application proposal, the Minister shall be deemed to have served a notice of proposal under subsection (1) to refuse to register the corporation.

(3) Where a corporation objects to a proposal under subsection (1) that is served on it, it may, within sixty days from the day of mailing of the proposal or the date upon which the Minister has been deemed to have refused registration under subsection (2), serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(4) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

(5) The Minister may accept a notice of objection under this section even though it was not served in the required manner.

(6) Where the corporation does not serve a notice of objection under subsection (3), the Minister may carry out the proposal stated in the notice under subsection (1).

(7) Upon receipt of the notice of objection, the Minister shall with all due dispatch reconsider the proposal objected to and confirm, vary or abandon the proposal, and the Minister shall thereupon notify the person making the objection of his or her action by registered mail.

(8) A decision of the Minister under subsection (7) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act, or involves an issue solely of law.

(9) In any dispute over a decision or action of the Minister under subsection (7), the Minister may, where the dispute involves the interpretation of a provision of this Act, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Divisional Court to have the issue in dispute determined, and if the Minister does not make the application within ten weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

33.- (1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on conviction is liable to a fine of not less than \$___ and not more than \$___.

(2) No person is guilty of an offence under subsection (1) if he or she did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

34.- (1) Sections 86 to 91 of the Corporations Tax Act shall be deemed to apply to,

- (a) an application for a tax credit certificate under this Act;
- (b) any books, records, accounts or returns required to be maintained or made by a labour sponsored venture capital corporation; and
- (c) any books, records, accounts, returns or information maintained by an eligible business, or by a corporation or partnership that has ceased to be an eligible business, in which the labour sponsored venture capital corporation has made an investment.

(2) In the application of sections 86 to 91 of the Corporations Tax Act for the purposes of this Act, any reference therein to a corporation shall be deemed to include a reference to persons other than corporations.

35. The Minister may delegate in writing any of his or her duties or powers under this Act to any public servant.

36. Any amount payable to the Minister under this Act with respect to the amount of a tax credit under subsection 127.4(3) of the Income Tax Act (Canada) shall be deemed to be an amount payable under that Act and shall be collected by the Minister under this Act as agent for the Minister of National Revenue.

37.- (1) The Lieutenant Governor in Council may make regulations,

- (a) requiring the payment of fees for any matter required to be done in the administration of this Act and prescribing the amounts thereof;
- (b) requiring any person to make information returns respecting any class of information required in assessing compliance with this Act;
- (c) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (d) prescribing any conditions that a corporation must meet prior to registration;
- (e) prescribing the method of determining the amount of equity capital of a labour sponsored venture capital corporation;
- (f) prescribing the method of calculation to be used in determining the percentage of wages and salaries paid in Ontario;
- (g) prescribing any rate of interest that is to be prescribed and the method by which the rate and the interest are to be calculated;
- (h) prescribing any matter required or permitted by this Act to be prescribed by the regulations.

(2) The Minister may make regulations,

- (a) prescribing forms and providing for their use;
- (b) prescribing anything that by this Act that is to be or may be prescribed by the Minister;

(3) A regulation is, if it so provides, effective with reference to a period before it was filed.

38. This Act shall be deemed to have come into force on the day of , 1991.

39. The short title of this Act is the Labour Sponsored Venture Capital Corporations Act, 1991.

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